

AMENDED IN SENATE APRIL 20, 2016

SENATE BILL

No. 1228

Introduced by Senator Runner
(Coauthors: Senators Bates and Berryhill)

February 18, 2016

An act to add ~~Chapter 4 (commencing with Section 550) to Title 7 of Part 2 of the Code of Civil Procedure, and to add Chapter 3.7 (commencing with Section 11367) to Part 1 of Division 3 of Title 2 of the Government Code, relating to small business.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 1228, as amended, Runner. Small business: California Small Business Regulatory Fairness Act.

~~Existing law generally requires that all administrative remedies are exhausted before a court may inquire into the validity of any final administrative order or decision and authorizes the court to inquire whether the agency proceeded without, or in excess of, the agency's jurisdiction, whether there was a fair hearing, and whether there was any prejudicial abuse of discretion, as specified.~~

~~This bill would authorize a court, after administrative remedies are exhausted, to grant equitable relief in the interest of justice to a small business, as defined, and requires the court to consider mitigating factors when granting the equitable relief including, but not limited to, that the small business engaged in subsequent action to correct the violation. The bill would, notwithstanding any other law, authorize a small business, before exhausting all administrative remedies, to seek judicial review and the stay of an order issued by a state agency if the small business would suffer irreparable harm in the absence of the court granting a stay of the state agency's order or the state agency issuing~~

~~the order has not complied with a specified section of law. The bill would, if the court grants the stay of the order, deem the small business to have exhausted all administrative remedies and would require the court to hear the case sitting without a jury. The bill would require the court to review the evidence and facts de novo and make its own independent judgment on the merits of the case. The bill would exempt any order from the Franchise Tax Board or the State Board of Equalization from these provisions.~~

Existing law, the Administrative Procedure Act, governs the procedures for the adoption, amendment, or repeal of regulations by state agencies and requires, among other things, that a state agency make available to the public facts, evidence, documents, testimony, or other evidence on which the state agency relies ~~on~~ to support the agency's determination that the proposed action will not have a significant adverse impact on business. Existing law establishes the Office of Small Business Advocate, within the Governor's Office of Business and Economic Development, and establishes the duties and functions of the Director of the Office of Small Business Advocate including, among other duties, representing the views and interests of small businesses before other state agencies whose policies and activities may affect small businesses. Existing law requires each state agency that significantly regulates small business or that significantly impacts small business to designate at least one person who is required to serve as a small business liaison.

This bill would require a state agency to assist a small business, as defined, in complying with all statutes and regulations administered by the state ~~agency, agency and~~ in any enforcement action by the state agency, ~~and in participating in the rulemaking process under the Administrative Procedure Act, as specified. The bill would require a state agency to include certain information on any notice of regulatory violation, penalty assessment, or other punitive action sent to a small business, including, among others, the contact information for the agency's small business liaison. The bill would, notwithstanding any other law, require a state agency, before assessing any administrative penalties or fines on a small business, to provide no less than 30 days actual notice to the small business and to provide the small business with an opportunity to comply with the law or remedy the violation if ignorance of the violation is reasonable under the circumstances and the violation does not constitute a crime or a basis for strict liability.~~ ~~agency.~~ The bill would, ~~no~~ not later than December 31, 2017, require

a state agency to create a policy, as specified, that provides for the reduction, and under certain circumstances waiver, of civil penalties for a small business based upon ~~principles of equity and fairness, and requires a state agency to consider~~ mitigating factors ~~when adopting the policy~~, including, but not limited to, that the violation by the small business ~~was committed inadvertently or without knowledge of the requirements for compliance with the law.~~ *did not pose an imminent health, safety, or environmental threat.*

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. This act shall be known, and may be cited, as the
2 California Small Business Regulatory Fairness Act.

3 SEC. 2. ~~Chapter 4 (commencing with Section 550) is added~~
4 ~~to Title 7 of Part 2 of the Code of Civil Procedure, to read:~~

5
6 ~~CHAPTER 4. CALIFORNIA SMALL BUSINESS REGULATORY~~
7 ~~FAIRNESS ACT~~

8
9 ~~550. (a) A court may, after administrative remedies are~~
10 ~~exhausted, grant equitable relief to a small business from a final~~
11 ~~order of a state agency in the interest of justice.~~

12 ~~(b) When granting equitable relief under this section, the court~~
13 ~~shall consider mitigating factors including, but not limited to:~~

14 ~~(1) The small business has not been subject to previous~~
15 ~~enforcement actions by the state agency.~~

16 ~~(2) The violation by the small business did not involve willful~~
17 ~~or criminal conduct.~~

18 ~~(3) The violation by the small business did not pose an imminent~~
19 ~~health, safety, or environmental threat.~~

20 ~~(4) The violation by the small business was committed~~
21 ~~inadvertently or without knowledge of the requirements for~~
22 ~~compliance with the law.~~

23 ~~(5) The small business is unable to pay the penalty or the penalty~~
24 ~~would impair the ability of the small business to conduct business~~
25 ~~or compete effectively.~~

~~(6) The small business has a low degree of culpability when its conduct is judged in light of its size, length of operation, and the sophistication of its owners or managers.~~

~~(7) The small business cooperated during any investigation by the state agency.~~

~~(8) The small business engaged in subsequent action to correct the violation.~~

~~(e) The court may take into consideration any other mitigating factors the court finds relevant. The court shall not be required to weigh the mitigating factors equally.~~

~~(d) The court shall review all evidence and facts de novo and make its own independent decision on the merits when granting relief under this section.~~

~~551. (a) Notwithstanding any other law, a small business may seek judicial review and a stay of an order of a state agency without exhausting administrative remedies if either of the following apply:~~

~~(1) The small business would suffer irreparable harm in the absence of the court granting a stay on the order of the state agency.~~

~~(2) The state agency issuing the order that is before the court has not established the policy required by Section 11367.4 of the Government Code.~~

~~(b) If a court grants relief to a small business under this section, the small business shall be deemed to have exhausted all administrative remedies and the case shall be heard by the court sitting without a jury.~~

~~(c) The court shall review all evidence and facts de novo and make its own independent decision on the merits.~~

~~(d) The decision of the court to decline review or deny relief under this section shall not be appealable.~~

~~552. (a) For purposes of this chapter, “small business” has the same meaning as set forth in Section 14837 of the Government Code.~~

~~(b) For purposes of this chapter, “state agency” shall not include the Franchise Tax Board or the State Board of Equalization.~~

~~SEC. 3.~~

~~SEC. 2. Chapter 3.7 (commencing with Section 11367) is added to Part 1 of Division 3 of Title 2 of the Government Code, to read:~~

CHAPTER 3.7. CALIFORNIA SMALL BUSINESS REGULATORY
FAIRNESS ACT

11367. The following terms shall have the following meanings for purposes of this chapter:

(a) “Small business” shall have the same meaning as set forth in Section 14837 of the Government Code.

(b) “State agency” means any state agency except the Franchise Tax Board or the State Board of Equalization.

11367.1. (a) A state agency shall do all of the following:

(1) Assist a small business in achieving compliance with statutes and regulations administered by the state agency.

(2) Assist a small business during an enforcement action by the state agency.

~~(3) Assist a small businesses with participating in the rulemaking process required by the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). A state agency shall provide a small business with information on how to participate in the rulemaking process and shall provide the contact information of any ombudsman or small business liaison that can assist the small business, including, but not limited to, the Office of Small Business Advocate.~~

~~(b) A state agency shall include all of the following information on any notice of regulatory violation, penalty assessment, or other punitive action sent to a small business:~~

~~(1) How the small business can comply with the law or remedy the violation, pursuant to Section 11367.2.~~

~~(2) All administrative and judicial remedies available to the small business.~~

~~(3) The Internet Web site, if available, and contact information for all of the following:~~

~~(A) The Office of Small Business Advocate.~~

~~(B) Any applicable ombudsman that may assist the small business.~~

~~(C) The small business liaison for the state agency.~~

~~11367.2. (a) Notwithstanding any other law, before imposing any civil penalties or administrative fines on a small business, a state agency shall provide no less than 30 days actual notice to a small business and shall provide the small business with an~~

1 opportunity to comply with the law or remedy the violation of the
2 law if ignorance of the violation is reasonable under the
3 circumstances and the violation does not constitute a crime or a
4 basis for strict liability.

5 (b) All other notices of regulatory violation, which result in
6 penalty assessment or other punitive action, sent to a small business
7 shall be delivered as expeditiously as possible to allow the small
8 business to comply with the law and mitigate any losses.

9 (c) Notices required under this section shall be delivered to the
10 small business in person by an authorized agent of the state agency
11 or by certified mail.

12 ~~11367.4. (a) No~~

13 (3) ~~Not~~ later than December 31, 2017, ~~a state agency shall~~
14 establish a policy to provide for reduction, and under certain
15 circumstances waiver, of civil penalties for a small business based
16 upon principles of equity and fairness. *mitigating factors including,*
17 *but not limited to:*

18 (b) ~~Mitigating factors that shall be considered by a state agency~~
19 ~~when adopting the policy in subdivision (a) include, but are not~~
20 ~~limited to:~~

21 (1)

22 (A) The small business has not been subject to previous
23 enforcement actions by the agency.

24 (2)

25 (B) The violation by the small business did not involve willful
26 or criminal conduct.

27 (3)

28 (C) The violation by the small business did not pose an imminent
29 health, safety, or environmental threat.

30 (4) ~~The violation by the small business was committed~~
31 ~~inadvertently or without knowledge of the requirements for~~
32 ~~compliance with the law.~~

33 (5)

34 (D) The small business is unable to pay the penalty or the
35 penalty would impair the ability of the small business to conduct
36 business or compete effectively.

37 (6)

38 (E) The small business has a low degree of culpability when its
39 conduct is judged in light of its size, length of operation, and the
40 sophistication of its owners or managers.

1 ~~(7)~~

2 (F) The small business cooperated during any investigation by
3 the state agency.

4 ~~(8)~~

5 (G) The small business engaged in subsequent action to correct
6 the violation.

7 ~~(e)~~

8 (b) A small business shall not be required to meet all of the
9 mitigating factors adopted by a state agency to receive relief under
10 the policy. A state agency shall not require the mitigating factors
11 to be weighed equally when granting relief to a small business
12 under the policy.

13 ~~(d) A court may independently weigh, de novo, all relevant~~
14 ~~mitigating factors when reviewing a decision by a state agency to~~
15 ~~grant relief to a small business under the policy.~~